



TOWN OF BROOKLINE

Massachusetts

OFFICE OF TOWN COUNSEL

Joslin Ham Murphy, Acting Town Counsel
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Jonathan Simpson, Associate Town Counsel

333 Washington Street
Brookline, MA 02445
617-730-2190

Fax: 617-264-6463

MEMORANDUM

November 30, 2016

TO: Board of Selectmen
School Committee

RE: School Space Lease, 62 Harvard Street

FR: John Buchheit

CC: M.E. Dunn
C. Simmons
J.H. Murphy

On behalf of the School Department, I request that you execute the First Amendment to the Town of Brookline School Space Lease for 62 Harvard Street. This First Amendment and the original Lease are attached. The Amendment increases the space rented at this location from 4,604 square feet to 5,524 square feet allowing for one additional classroom (three classrooms to four classrooms). With this Amendment, the Town is now renting the entire third floor of the building.

The original Lease was executed by you in August 2015. The Lease is for a five-year term, but the Town, in its sole discretion, has the option to extend the Lease for two two-year terms. Therefore, the Lease can be a five, seven or nine-year lease at the Town's sole discretion. The cost of the Lease is based on the amount of square footage rented. This rent increases each year. In the current year, Year Two, the rent is \$28.83 per square foot. In Year Five, it is \$31.51 per square foot. In addition, the Lease requires the Town to pay its pro rata share of the building operating expenses, which include taxes, insurance, building management fees and other costs. For illustrative purposes, the cost

Board of Selectmen

November 30, 2016

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figures for building operating expenses in the year prior to August 2015 are included at Exhibit C of the Lease. The Town's pro rata share of the building operating costs before the Amendment is .207 (4,604/22,222). With the Amendment, its pro rata share increases to .249 (5,524/22,222).

Thank you for considering the School Department's request.

FIRST AMENDMENT

TOWN OF BROOKLINE SCHOOL SPACE LEASE (62 HARVARD STREET)

This First Amendment is made on _____, 2016 to the Lease dated August 4, 2015 between the Landlord 62 Harvard Street LLC and the Tenant Town of Brookline, acting by and through the Public Schools of Brookline ("PSB") on behalf of the User Agency, the Public Schools of Brookline, for Premises located on the third floor the Building at 62 Harvard Street, Brookline, MA 02445.

WHEREAS, the Landlord and Tenant wish 1.) to increase the amount of space rented by the Tenant by one classroom for a total of four classrooms at the Premises and 2.) to ratify and confirm all other terms and conditions of the Lease.

THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree to amend the Lease as follows:

1. The parties agree that for the new space (fourth classroom), the Date of Occupancy and Completion Date shall be August 16, 2016 and that the buildout shall be substantially complete by the aforementioned date.
2. Upon the Date of Occupancy, Exhibit A of the Lease shall be replaced with the Exhibit A attached hereto; "USABLE AREA OF PREMISES" in Section 1.1 of the Lease shall be changed to 5,524 +/- ; and "ADDITION RENT" in Section 1.1 shall be changed to reflect a new pro rata share, which, as of the Date of Occupancy set forth above shall be 22.7 percent. Also, added to this "ADDITIONAL RENT" in Section 1.1 shall be the Tenant's contribution to the buildout (fourth classroom) as set forth in Section 4.1 and Exhibit A, attached hereto. This contribution shall be \$43,570.

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Board of Selectmen of the Town of Brookline and the School Committee of the Town of Brookline, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

By: Debra O'Boyle

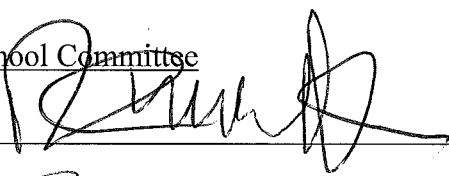
Printed Name: Debra O'Boyle


Title: Manager

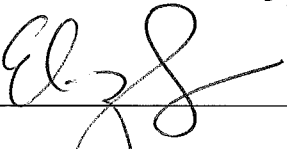
**TENANT: TOWN OF THE BROOKLINE ACTING BY AND THROUGH ITS BOARD
OF SELECTMEN AND SCHOOL COMMITTEE**

Board of Selectmen

School Committee

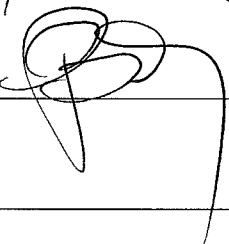






Barbara Scott

Nella Charlapuk



Approved as to Matters of Form:

_____, _____ Town Counsel
Town of Brookline

Exhibit A



Beth McDonald <beth_mcdonald@psbma.org>

Re: FW: 62 Harvard Floor Plan

Beth McDonald <beth_mcdonald@psbma.org>
To: John Buchheit <jbuchheit@brooklinema.gov>
Cc: Robin Coyne <robin_coyne@psbma.org>

Wed, Nov 30, 2016 at 3:09 PM

Hi John,

We have the First Amendment Lease ready with the Exhibit A. I am going to see if Daryl can come in and sign the lease. The School Committee has the item on their Agenda for their meeting tomorrow night, Thursday, December 1st. Would you be able to draft a cover memo for the School Committee and Selectmen.

Thanks,
Beth

[Quoted text hidden]

**TOWN OF BROOKLINE
SCHOOL SPACE LEASE**

1. SUBJECT MATTER AND TABLE OF CONTENTS

1.1 Subject Matter

Each of the references in this Lease to any of the following subjects incorporates the data stated for that subject in this § 1.1 and, unless defined elsewhere in this Lease, constitutes the definition of the listed subject.

DATE OF LEASE: ^{August 4}~~July~~ ____, 2015

LANDLORD: 62 Harvard Street LLC

ADDRESS OF LANDLORD: 62 Harvard Street, Brookline, MA 02445

LANDLORD'S REPRESENTATIVE: Name: Daryl Dwan

Address: PO Box 1266, Dedham, MA 02027

(e) harvardstllc@gmail.com

(c) 508-451-1534

and/or such other persons as Landlord designates from time-to-time

TENANT: The Town of Brookline acting by and through the Public Schools of Brookline (PSB) on behalf of the User Agency, the Public Schools of Brookline

ADDRESS OF TENANT: Public Schools of Brookline, 333 Washington Street, 5th Floor, Brookline, MA 02445

TENANT'S REPRESENTATIVE: Name: Mary Ellen Dunn, PSB Deputy Superintendant of Administration and Finance.

Address: 333 Washington Street, 5th Floor
Brookline, MA 02445

(e) MaryEllen_Dunn@brookline.k12.ma.us

(t) 617-730-2424

and/or such other persons as Tenant designates from time-to-time, as set forth in § 4.4

USER AGENCY: Public Schools of Brookline

ADDRESS OF

USER AGENCY: 333 Washington Street, 5th Floor, Brookline, MA 02445

USER AGENCY'S REPRESENTATIVE: Name: Mary Ellen Dunn

Address: 333 Washington Street, Brookline, MA 02245

(e) MaryEllen_Dunn@brookline.k12.ma.us

(t) 617-730-2424

and/or such other persons as User Agency designates from time-to-time, as set forth in § 4.4

BUILDING (ADDRESS): 62 Harvard Street, Brookline, MA 02445

PREMISES: Portion of third floor of the Building as shown in Exhibit A, together with all of the Landlord's Improvements (as defined in § 4.1) made within the Premises pursuant to the provisions of this Lease.

LAND: Brookline Assessors' Map 36, Parcel 172 05-10.

USABLE AREA OF PREMISES: 4,604+/-.

RESERVED PARKING SPACES: Number: four unreserved

PERMITTED USES: Subject to the provisions of § 6.1, Tenant must use the Premises for the following purposes: School and Municipal Purposes and for no other purpose.

INITIAL TERM: The Initial Term begins on the Date of Occupancy, as defined in § 3.2, at 12:01 a.m., and continues until 11:59 p.m. of the date immediately preceding the fifth anniversary of the Date of Occupancy. "Term" includes the Initial Term and any extension term (Extension Term) unless otherwise expressly stated. "Expiration Date" means the last day of the Initial Term or of the then applicable Extension Term, and includes any effective date of termination of this Lease, unless otherwise indicated. Landlord has agreed to have the Premises ready for issuance of a Temporary Certificate of Occupancy on August 17, 2015.

BUSINESS DAY: Unless otherwise provided by this Lease, "business day" means any day other than Saturday, Sunday, or a designated holiday of the Commonwealth of Massachusetts on which the offices of the Town of Brookline are closed.

BASE RENT FOR INITIAL TERM:

Year One: \$28 per sf x Usable Area of Premises
Year Two: \$28.84 per sf x Usable Area of Premises
Year Three: \$29.71 per sf x Usable Area of Premises
Year Four: \$30.60 per sf x Usable Area of Premises
Year Five: \$31.51 per sf x Usable Area of Premises

ADDITIONAL RENT

Tenant will pay its pro rata share of certain costs, set forth in Exhibit B, represented by the ratio of the Usable Area divided by the total area of the Building, which is represented by the Landlord to be approximately 22,222 square feet. The pro rata share is 20.7 percent ($4,604/22,222 = .207$). The pro rata share may change based upon Tenant Leasing more or less space or changes that Landlord may make to the Building, or based upon adjustments made pursuant to Section 2.2(b), below. Upon request, Landlord shall provide documentation of the common charges set forth in Exhibit B. In addition, the Tenant will pay Landlord \$325,000 for the buildout of the space ("Landlord Improvements") as set forth in Section 4.1 below and as shown on Exhibit A

If any amount payable to Landlord under this Lease is not paid when due or any check is dishonored, including payments for Base Rent and Additional Rent, Tenant shall pay to Landlord a late payment fee based on the highest amount permitted under M.G.L. c. 29 §29C.

RIDER, EXHIBITS, AND OTHER ACCOMPANYING DOCUMENTS

Exhibit A: Plan Showing Location of Premises within the Building

Exhibit B: Additional Rent

Exhibit C: Certain Costs for which Tenant Will Be Liable for Its Pro Rata Share

2. PREMISES; USABLE AREA

2.1 Premises; Appurtenant Rights

(a) Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord.

(b) As appurtenant to the Premises, Tenant, in common with other tenants and users of the Building (and subject to the rules of the Building, as set forth in § 6.4), has the right to use: (i) the common lobbies, malls, corridors, stairways, elevators, service areas, and loading platform of the Building; (ii) the pipes, ducts, conduits, wires, and appurtenant meters and equipment serving the Premises in common with other premises within the Building; (iii) common pedestrian walkways and landscaped areas; (iv) if the Premises include less than the entire floor area of any floor of the Building, the common restrooms, corridors, and elevator lobbies located on such floor and serving the Premises; and (v) all other areas in or about the Building from time-to-time intended for general use by Tenant and other tenants and users of the Building.

2.2 Usable Area

(a) For the purposes of this Lease, "Usable Area" means, with respect to the Premises or any space removed from or added to the Premises, the square footage determined by measuring the entire floor area of the Premises (or such other space) bounded by a line established by the predominant inside finish of the permanent outside Building walls that abuts the floor (not from the inside face of the windows) and by the interior surface of corridor walls or other demising walls. Deductions are not made for columns or other structural elements, or for partitions subdividing the Premises. Notwithstanding the foregoing, under no circumstances does the Usable Area include major vertical penetrations such as ventilation shafts, elevator shafts, stairwells, atria, or lightwells, and their respective enclosing walls, and it does not include vestibules, elevator-machine rooms, and other building-equipment areas, janitorial, electrical, and mechanical closets, loading platforms, common restrooms, and their respective enclosing walls, irrespective of whether Tenant occupies a portion of a floor, an entire floor, or an entire Building.

(b) Landlord warrants and represents to Tenant that Exhibit A is complete and accurate in all respects. If it is determined that Exhibit A is not accurate and that the Usable Area of the Premises is larger or smaller than depicted in Exhibit A by a factor of 1% or more, then, at the option of Landlord or Tenant, Landlord and Tenant must modify this Lease to state the actual Usable Area of the Premises and to adjust Rent upward or downward as the case may be to reflect the actual Usable Area.

3. RENT; DATE OF OCCUPANCY

3.1 Rent Payment

Tenant agrees to pay, and Landlord agrees to accept, Rent described in § 1.1. Equal monthly installments of Rent are payable on or before the 1st day of the calendar month for which Rent is due without offset and irrespective of any other covenant contained herein. If the Initial Term commences other than on the first day of a calendar month or ends other than on the last day of a calendar month, Rent for such fractional month is prorated. Notwithstanding the second sentence of this paragraph, if the Initial Term commences other than on the first day of a calendar month, Tenant pays the prorated Rent for such partial calendar month concurrently with the payment of the installment for the first full calendar month of the Initial Term.

3.2 Date of Occupancy; Commencement of Rent Obligation

(a) Landlord understands that time is of the essence and that it will work diligently to have the Premises ready for occupancy on August 17, 2015. Tenant will take occupancy of the Premises on August 17, 2015, provided the agreed upon improvements have been made and the Premises are clean and otherwise ready for occupancy. Nevertheless, the parties recognize the obligation of Tenant to pay Rent begins on the Date of Occupancy. The Date of Occupancy, if not August 17, 2015 is the earlier of (a) the 5th day after the Premises are available for Tenant's occupancy, or (b) the day Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses. The Premises are deemed available for Tenant's occupancy only when (i) Landlord substantially completes all of the Landlord's Improvements (as defined in § 4.1) in accordance with the provisions of this Lease, with only Punchlist Items (as defined in § 4.3) excepted, (ii) Landlord provides Tenant with a copy of any other report, drawing, and record required before occupancy by this Lease, and (iii) Landlord provides Tenant with the certificates of insurance that are required by § 8.2.

(b) Notwithstanding that Landlord meets all of the requirements set forth in the preceding paragraph for establishing the Date of Occupancy, the Date of Occupancy is not deemed to occur before the August 17, 2015 unless Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses before the Completion Date.

3.3 Tenant's Entry before Term without Charge

(a) With the prior approval of Landlord and after complying with the insurance requirements herein required during the Term, Tenant may enter the Building and Premises before the Date of Occupancy without payment of any additional sums in order to install telephone equipment, cabling, furniture, and fixtures, and otherwise to prepare the Premises for occupancy by Tenant. Landlord must not withhold or delay such approval, provided that Tenant coordinates Tenant's work with the construction of the Landlord's Improvements and any other work being performed by Landlord in the Building so as not to interfere with or increase the cost of such work of Landlord or delay the Completion Date. As a condition of granting such approval, Landlord has the right to require that a representative of Landlord accompany Tenant and Tenant's contractors, and Tenant agrees, on behalf of Tenant and Tenant's contractors, to comply with any and all reasonable directions given by said representative of Landlord. During this early prior to the Date of Occupancy, Tenant shall be subject to all of the covenants, conditions and indemnifications set forth herein, other than the obligation to pay Rent and Additional Rent.

(b) In order to assist Tenant with Tenant's preparation, move into, and occupancy of the Premises, Landlord must provide Tenant and Tenant's agents and contractors with all information concerning the Building's structure, systems, utilities, equipment, and services that Tenant reasonably requests and which Landlord possesses. Landlord must provide such information with reasonable promptness, whether before or after commencement of the Term.

4. IMPROVEMENTS BY LANDLORD

4.1 Landlord's Improvements

Landlord, at Landlord's sole cost and expense (except as otherwise specifically provided in this Lease), must furnish all labor and materials necessary to construct the agreed upon Landlord

Improvements to the Premises and to make any and all improvements or alterations to the Building and exterior areas that the Lease requires. The Landlord Improvements are shown on the plans attached hereto at Exhibit A, shall be substantially completed before the Date of Occupancy, unless otherwise agreed to in writing by the Tenant, and include the following: (i) installing ADA compliant girls and boys bathrooms on the Premises, (ii) constructing five (5) rooms and an office/administration area, (iii) constructing a common corridor, (iv) new windows, window shades, walls, doors, flooring and locks, (v) new paint on walls and ceilings, (vi) new HVAC system, (vii) new lighting, (viii) upgrades to fire alarm and sprinkler system to meet code, and (ix) agreed upon plumbing improvements set forth, in the attached plans. Notwithstanding the content shown on the plans, Landlord shall not bear any cost associated with the purchase of lockers, but shall install Tenant furnished lockers which shall be removed by Tenant as of the expiration or earlier termination of this Lease. Tenant shall pay Landlord \$325,000 toward the cost of Landlord's Improvements, 2/3 of which shall be paid by Tenant to Landlord on or before August 7, 2015 and 1/3 of which shall be paid to Landlord upon the earlier of Tenant taking occupancy of the Leased Premises or substantial completion of Landlord's Improvements indicated by a Certificate of Occupancy .

4.2 Plans and Changes

- (a) Notwithstanding any other provision of this Lease, if Tenant requests any change to the plans or to the Landlord's Improvements that causes an increase in Rent or requires Tenant to pay any additional sum to Landlord or to Landlord's contractors, Landlord must not make such change, and Tenant has no liability for any cost that Landlord or any other party incurs in connection with such change, unless and until Landlord and Tenant execute a written modification of this Lease, specifying such change and the additional rent or other payment that Tenant must make.
- (b) It is understood and agreed that Landlord and Landlord's architects and engineers are fully and completely responsible for all aspects of the design, engineering, and construction of the Landlord's Improvements. No comments on or approval by Tenant of plans or any other advice or opinions provided by Tenant concerning the design or construction of the Landlord's Improvements renders Tenant responsible for the design, engineering, or construction of the Landlord's Improvements, or invests Tenant with any responsibility for defects or other Building conditions.

4.3 Completion Date; Tenant Delays; Standard for Substantial Completion

- (a) Subject to Tenant Delays and any Force Majeure Event (as defined in § 15), Landlord must substantially complete all of the Landlord's Improvements so that it can receive a Temporary Certificate of Occupancy by August 17, 2015 (the "Completion Date"). If, at any time, it appears that this deadline will not be met, Landlord must notify Tenant immediately, in writing. Such notice must advise Tenant of each reason for delay and of the new projected Completion Date.
- (b) If a Force Majeure Event delays the Completion Date, then the Completion Date, as modified from time to time, must be extended by the actual number of days that a Force Majeure Event delays the Completion Date, but in no event can such extension of the Completion Date for Force Majeure Events exceed 150 days in the aggregate without Tenant's written consent, which Tenant has the right to withhold for any reason or for no reason, in Tenant's sole discretion.
- (c) If the Completion Date is delayed due to a Tenant Delay, then the Completion Date, as extended from time to time, must be extended by the actual number of days that such Tenant

Delay delays the Completion Date. For the purposes of this Lease, "Tenant Delay" means any delay in the Completion Date that is directly and primarily caused by any of the following acts or omissions of Tenant, provided such act or omission continues for a period of more than two business days after receipt of notice from Landlord that such act or omission is likely to cause a delay in the Completion Date:

- (i) Tenant's request for work to the Premises not included in this Lease; or
- (ii) Tenant's request for a change in the work that Tenant previously approved; or
- (iii) Delays in the delivery, installation, or completion of any work that Tenant or Tenant's contractors perform; or
- (iv) Any failure by Tenant to perform any of Tenant's obligations under this Lease; or
- (v) Any act or omission by Tenant which interferes with construction of the Landlord Improvements, or any failure to make a required payment to Landlord.

(d) Such notice must be sent to Tenant in an envelope bearing the following notice printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

NOTICE OF TENANT DELAY – OPEN IMMEDIATELY

(e) The extension of the Completion Date for Tenant Delays is Landlord's sole and exclusive remedy for Tenant Delays, but in no event can such extension of the Completion Date for Tenant Delay exceed 150 days in the aggregate without Landlord's written consent, which Landlord has the right to withhold for any reason or for no reason, in Landlord's sole discretion.

(f) The Landlord's Improvements are substantially complete for the purposes of this Lease only when (i) Landlord performs the work it is required to perform, including complete installation of all structural and mechanical elements, walls, partitions, windows, floor and ceiling coverings, wiring, fixtures, life-safety systems, decorations, paint, and exterior improvements, with only Punchlist Items excepted, (ii) Landlord makes the water supply, sewage, heating, ventilating, air conditioning, and electric facilities available to Tenant in accordance with the obligations that Landlord assumes under this Lease, and (iii) Landlord has caused the Premises to be free of debris and construction materials, in a usable and tenantable condition, and cleaned.

(g) Subject to Tenant Delays and Force Majeure Events only, Landlord must cause the Landlord's Improvements to be substantially completed by August 17, 2015. Landlord must keep Tenant apprised of the progress of the work that Landlord performs under this Lease. If there is any delay in the progress of the work, Landlord must notify Tenant of such delay immediately, regardless of whether Landlord anticipates that such delay causes a delay in the Completion Date. Said notice must advise Tenant of all changes or adjustments in the schedule, the cause of each change or adjustment, and the corrective efforts, if any, that Landlord has made, proposes to make, or both.

(h) If the Landlord's Improvements are not substantially completed within 30 days after the Completion Date, as extended for Tenant Delays, a Force Majeure Event, or otherwise by agreement of Landlord and Tenant, Tenant has, in addition to any other remedies available to Tenant under this Lease, at law, or in equity, the right to terminate this Lease by giving Landlord a written Notice of Termination, which right Tenant must exercise within 30 days after this 30 day period in which case the Landlord shall return to Tenant the \$325,000 contribution to Landlord Improvements and this Lease shall terminate without further recourse to the parties hereto.

(j) Notwithstanding Tenant's consent to any extension of the Completion Date, Landlord must promptly complete all Punchlist Items, and in every event, Landlord must complete Punchlist Items no later than 30 days after the Date of Occupancy, subject to Force Majeure Events and

Tenant delays. For the purposes of this Lease, "Punchlist Items" means only items that do not materially impair Tenant's ability to use and occupy the Premises in accordance with the provisions of this Lease. On or before the Date of Occupancy, Landlord and Tenant must conduct a walk-through of the Premises and must identify, in writing, all Punchlist Items that Landlord must complete.

(k) The construction of the Landlord's Improvements must be (i) coordinated with any work being performed by Tenant, provided that such coordination does not materially interfere with Landlord's construction schedule, delay the Completion Date, or increase the cost of the Landlord's Improvements, (ii) completed in accordance with approved plans, if any, and in a good and workmanlike manner, (iii) performed and completed in compliance with all applicable laws, ordinances, codes, and regulations, and (iv) performed and completed at Landlord's sole expense (except those costs agreed to by Tenant set forth in this Lease) including the cost of all design work, materials, labor, and state and local permits. Approval by Tenant of plans or changes in plans, whether expressly given or resulting from Tenant's inaction, must never be construed as a waiver of any of the requirements of this paragraph.

4.4 Tenant's Representative, User Agency's Representative, and Authorized Representative
Tenant designates the individual named in § 1.1 as Tenant's Representative and as User Agency's Representative. Tenant designates Tenant's Representative as Authorized Representative, who has full power and authority to make decisions on behalf of Tenant with respect to matters pertaining to the design and construction of the Landlord's Improvements, except that Authorized Representative has no authority whatsoever to alter, waive, or modify any provision of this Lease, which must only be done in accordance with the provisions of § 16.3. Landlord must deliver the plans, if any, and any requests for changes or modifications to the plans to both Tenant's Representative and User Agency's Representative. Authorized Representative or Authorized Representative's successor must communicate to Landlord, in writing, Tenant's approval or disapproval of any plans and all other decisions relating to the Landlord's Improvements, and Landlord must rely only upon written communications received from such individuals unless Tenant otherwise notifies Landlord in writing.

5. LANDLORD'S COVENANTS

5.1 Ownership; Signatory Authority; Debarment; Pending Proceedings; Changes
Landlord warrants and represents:

(a) Landlord has record title to the premises (or if this Lease is a sublease, Landlord warrants and represents that Landlord holds a current and valid lease of the premises) of which the Premises are a part, and that there are no encumbrances affecting the Premises or Building that would prohibit or interfere with the construction of the Landlord's Improvements or the use of the Premises for the Permitted Uses (or the sublease of the Premises if this Lease is a sublease).

(b) Landlord's name appears in this Lease exactly as Landlord's name appears on Landlord's record title to the Premises if Landlord owns the Premises, or exactly as Landlord's name appears in Landlord's lease if this Lease is a sublease.

(c) Landlord has full legal capacity to enter into this Lease.

(d) If Landlord is not a natural person or natural persons, but Landlord is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), Landlord is validly organized and existing, Landlord is in good standing in the state, commonwealth, province, territory, or jurisdiction of Landlord's organization, and Landlord is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the Premises are located.

(e) The execution of this Lease is duly authorized, and each person executing this Lease on behalf of Landlord has full authority to do so and to fully bind Landlord.

(f) Landlord is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.

(g) Landlord knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law-enforcement agency against or affecting Landlord or Landlord's properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Lease or Landlord's ability to carry out Landlord's obligations.

5.2 Delivery of Premises; Compliance with Law

Landlord warrants and represents:

(a) Landlord must deliver the Premises to Tenant in good, clean, safe, and occupiable condition, and otherwise in accordance with the provisions of this Lease, and that the construction of the Landlord's Improvements and Building common areas to which Tenant has appurtenant rights, and the use of the Premises by Tenant for the Permitted Uses must be in full compliance with (i) all applicable overleases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes, and regulations (including, without limitation, those pertaining to accessibility for disabled persons) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance-rating body or bodies.

(b) Throughout the Term, Landlord must maintain the Premises in good, clean, safe, and occupiable condition, and otherwise in accordance with the provisions of this Lease, and the Landlord's Improvements and Building common areas to which Tenant has appurtenant rights, must be in full compliance with (i) all applicable overleases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes, and regulations (including, without limitation, those pertaining to accessibility for disabled persons) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance-rating body or bodies. Irrespective of any provision of this Lease to the contrary, Landlord specifically disclaims any representation or warranty not expressly contained herein, including those related to zoning compliance for the Permitted Use and any implied warranty of habitability or fitness for the Permitted Use.

(c) If, at any time, any governmental authority with jurisdiction or the Board of Fire Underwriters or any similar insurance-rating body notifies Landlord or Tenant that all or any part of the Premises or Building was or is not constructed or maintained in compliance with any applicable law, ordinance, code, or regulation, and demands compliance, then Landlord, upon receipt of such notification, promptly must cause such repairs, alterations, or other work to be done so as to bring about the compliance demanded. Landlord has the right to defer compliance so long as Landlord contests the validity of any such law, order, or regulation in good faith and by appropriate legal proceedings, provided that such failure to comply must not in any way interfere with Tenant's use of the Premises for the Permitted Uses, subject Tenant or Tenant's

employees or invitees to any increased risk of injury to their persons or property, adversely affect any other right of Tenant under this Lease, or impose any additional obligation upon Tenant.

(d) To avoid any doubt, notwithstanding the terms of this Section 5.2, Landlord shall not be required to provide any custodial/janitorial services and shall not be required to address any damage to the Premises or Building caused by the negligence, waste or misuse by Tenant, its agents, employees, students, licensees and invitees.

5.3 Quiet Enjoyment

(a) Landlord warrants and covenants that as long as there is no Event of Default (as defined in § 9.1) by Tenant under this Lease, Tenant must have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of Landlord or any other person for whose actions Landlord is legally responsible, or by any person claiming by, through, or under Landlord.

(b) At reasonable times and without unreasonably interfering with Tenant's use, occupancy, and enjoyment of the Premises, Landlord and Landlord's agents have the right to enter the Premises to make repairs or to view the Premises. Landlord must give Tenant reasonable notice of such visits; provided, however, that Landlord has the right to enter the Premises at any hour and without notice in the case of an emergency affecting the Premises.

(c) Landlord has the right to enter for the purpose of showing the Premises to prospective tenants only during the last nine months of the Term. Landlord must notify Tenant (Landlord has the right to give such notice by telecopier (fax)) at least 24 hours before showing the Premises to prospective purchasers, tenants, or other parties. Landlord shall not show the Premises during school hours (currently 8 a.m to 2:30 p.m. M-F).

5.4 Correction of Defective Work; Repair of Premises and Building

(a) During the Term, Landlord must promptly correct, repair, or replace any defective aspects of the Landlord's Improvements of which Landlord becomes aware after the Date of Occupancy (Latent Defects).

(b) Landlord must keep and maintain the Premises, including, without limitation, all equipment and fixtures that Landlord furnishes as part of the Landlord's Improvements (whether located within or outside of the Premises) in such good repair, order, and condition as the same are in at the beginning of the Term, reasonable wear and tear, damage that fire or other casualty causes (except as provided in § 7.1), and damage that Tenant's negligence, misuse, Tenant's breach of this Lease, or Tenant's willful misuse causes excepted (reference in this paragraph to "Tenant" shall include Tenant's agents, employees, contractors, subcontractors, invitees and students). Without limiting the foregoing, but subject to any additional or limiting provisions of Exhibit B, Landlord's obligations include repair of broken glass, doors, floor coverings, interior walls and partitions, ceiling tiles, plumbing and lighting fixtures, locks, fire protection equipment, heating, ventilation, and air conditioning equipment, and cabling. Landlord must make such repairs to the roof, foundation, exterior walls, floor slabs, and common areas and facilities of the Building, including finishes, as are necessary to keep them in good condition.

(c) Landlord must make routine non-janitorial/custodial repairs, corrections, and replacements to the Premises, to any of the Landlord's Improvements outside of the Premises, or to any other portion of the Building within five business days after Landlord discovers or Tenant notifies Landlord or Landlord's authorized representative of the condition requiring repair, correction, or replacement, or within such shorter time period as applicable law, code, or regulation requires,

all subject to Force Majeure Events and Tenant delays. A routine repair, correction, or replacement is any repair, correction, or replacement that is not an emergency repair, correction, or replacement as defined in § 5.4 (d).

(d) Landlord must make emergency repairs, corrections, and replacements to the Premises, to any of the Landlord's Improvements outside of the Premises, or to any other portion of the Building immediately upon Landlord's discovery of or Tenant's notice to Landlord or to Landlord's authorized representative of the condition requiring repair, correction, or replacement. An emergency repair, correction, or replacement is any repair, correction, or replacement that is required to remove an immediate threat to the life, health, or safety of any person or property upon the Premises or the appurtenant areas described in § 2.1.

(e) Landlord must complete all repairs, corrections, and replacements (i) at Landlord's sole cost and expense, except as provided by this § 5.4 and Exhibit B, (ii) in a good and workmanlike manner, (iii) with respect to repairs, corrections, and replacements of the Premises and the Landlord's Improvements only, with materials of equal or better quality than the original, and (iv) in compliance with all applicable laws, ordinances, codes, and regulations.

(f) In (i) scheduling and carrying out the repairs that this Lease requires, (ii) making any optional repairs, alterations, or improvements to the Building or Premises, and (iii) performing routine maintenance of Building systems, fixtures, or equipment, Landlord must make all reasonable efforts to minimize interference with Tenant's access to and use of the Premises. If any such repairs or maintenance by Landlord causes Tenant to be deprived of the use or quiet enjoyment of all or a material portion of the Premises for a period of more than five consecutive business days, subject to any delays caused by Force Majeure Events and Tenant delays, Rent for each succeeding day must be abated in proportion to the deprivation unless said repairs or maintenance are required due to damage caused by the negligence, breach of this Lease, or willful misconduct of Tenant or Tenant's agents or contractors and students.

(g) To avoid any doubt, notwithstanding the terms of this Section 5.4, Landlord shall not be required to provide any custodial/janitorial services and shall not be required to address any damage to the Premises or Building caused by the negligence, waste or misuse by Tenant, its agents, employees, students, licenses and invitees, all of which shall be Tenant's responsibility.

5.5 Delivery of Services and Utilities

(a) The Premises shall be separately metered for electricity and the Tenant shall be responsible for those charges. Electrical service must be of sufficient capacity to provide adequate power for electrical equipment to be installed as part of the building, plus power required to operate all of the Public Schools of Brookline's equipment, including but not limited to its computer network system

(b) The building should be wired to allow internet access and telephone service to the Premises.

(c) Landlord shall provide fully automatic HVAC systems capable of maintaining minimum winter temperatures of 68 degrees Fahrenheit and maximum summer temperatures of 78 degrees Fahrenheit throughout the Premises for the term of the Lease.

(d) Landlord shall be responsible for general maintenance and repair of the Premises.

(e) As set forth in §5.4, Landlord shall be responsible for all general maintenance and repair of the common areas of the Building.

(e) Landlord shall, at its sole expense, keep pedestrian access, walkways and building free of ice and snow.

- (f) To avoid any doubt, notwithstanding the terms of this Section 5.5, Landlord shall not be required to provide any custodial/janitorial services and shall not be required to address any damage to the Premises caused by the negligence, waste or misuse by Tenant, its agents, employees, students, Licenses and invitees;
- (g) Tenant shall be responsible for paying directly to the applicable service provider all separately metered utilities, cable, telephone and internet service.
- (h) Landlord will treat commons areas for pests and/or cause other building tenants to do same as necessary and appropriate per its agreement with other building tenants. If a pest problem is caused or substantially exacerbated by the Tenant, Tenant shall be responsible for all (or a portion allocated to Tenant's conduct) of said costs of necessary treatment.

5.6 Hazardous Substance

(a) Landlord represents that Landlord has no knowledge of, and has not received any notice of, the current or past existence of any material, currently considered to be a Hazardous Substance, that is existing, deposited, or discharged on or from, or transported to, from, or across, or migrating toward or across the Premises, the Building, or the land upon which the Building is located. For purposes of this Lease, Hazardous Substance means (i) any "hazardous substance," "hazardous material," "toxic substance," "hazardous waste," "hazardous pollutant," or "toxic pollutant," oil, asbestos, urea formaldehyde foam insulation, or "solid waste," as presently defined or otherwise denominated as hazardous, toxic, or a pollutant or a special waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as modified from time to time (42 U.S.C. 9601 et seq.) (CERCLA), the regulations promulgated under CERCLA, and the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.); (ii) any additional substance or material that is incorporated in or added to the definition of "hazardous substance" for the purposes of such laws; (iii) a substance listed in the United States Department of Transportation Table (49 CFR 172.101, as modified) or by the Environmental Protection Agency (or any successor agency) as a hazardous substance (40 CFR Part 302, as modified); (iv) any hazardous waste or solid waste, as defined in the Resource Conservation and Recovery Act of 1976, as modified by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C.A. 6901 et seq.); (v) any material, waste, or substance that is (A) petroleum, (B) asbestos or an asbestos-containing material, (C) polychlorinated biphenyls, (D) urea-formaldehyde (UFFI) or UFFI-containing material, (E) radon, (F) designated as a "hazardous substance" pursuant to § 311 of the Clean Water Act (33 U.S.C. 1251 et seq.), or listed pursuant to § 307 of the Clean Water Act (33 U.S.C. 1317); (G) flammable explosive; or (H) radioactive material; and (vi) any additional substance or material that is considered to be a "hazardous substance," "hazardous material," "toxic substance," "hazardous waste," "solid waste," or regulated substance or material (including, without limitation, any asbestos-containing material) under any state, federal, or local law, rule, or regulation governing health, safety, natural resources, or the environment relating to the Premises, the Building, or the land upon which the Building is located, including, without limitation, G. L. c. 21E (being the Massachusetts Oil and Hazardous Materials Release and Prevention Act) and the definitions of oil and/or hazardous material promulgated thereunder, G. L. c. 21C, Title 5 of the State Environmental Code, G. L. c. 111, 150A, and any hazardous and inflammable substance regulated under G. L. c. 148. Each reference in this Lease to law, a rule, a regulation, etc., whether specific or general, is to law, a rule, a regulation, etc., that is currently in effect, as modified or supplemented.

(b) Landlord agrees that Landlord must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about, or transported to, from, or across the Premises, the Building, or the land upon which the Building is located, or to migrate toward the Premises, the Building, or the land upon which the Building is located, provided, however, that this does not (i) prohibit Landlord from permitting other tenants or users of the Building from using any Hazardous Substance subject to the same provisions that are applicable to Tenant, or (ii) prohibit Landlord and Landlord's contractors from using necessary amounts of cleaning fluids, pesticides, gasoline, solvents, or similar supplies necessary to carry out Landlord's construction, repair, and maintenance obligations under this Lease, any of which constitutes a Hazardous Substance, provided that such use, including storage and disposal, by Landlord is in compliance with the manufacturers' instructions and recommendations for the safe use of such products, and with all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment, safety, or any Hazardous Substance.

(c) Landlord must promptly take or cause others to take all actions that are necessary to assess, remove, and/or remediate each Hazardous Substance that is on, under, or migrating toward the Premises, Building, or land upon which the Building is located (unless generated by Tenant), as and to the extent required by all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance. Landlord must also take all actions required to prevent such Hazardous Substance from causing injury or damage to Tenant and Tenant's employees, agents, contractors, and invitees, or if injury or damage cannot be prevented, to minimize such injury or damage to the greatest extent possible.

(d) Landlord must indemnify, save harmless, and defend, under the direction of Town Counsel of the Town of Brookline, Tenant from all liability, claim, or cost (including reasonable costs of legal counsel and response costs as defined under CERCLA) resulting directly or indirectly from any Hazardous Substance (i) on or under the Premises, the Building, or the land upon which the Building is located before the Date of Occupancy, or (ii) after such date with respect to any Hazardous Substance that Landlord, Landlord's employees, agents, independent contractors, or invitees (that include, for the purposes of this § 5.6, any other tenant of the Building, but only if Landlord knowingly permits such tenant to carry out activities involving a Hazardous Substance in breach of Landlord's obligations in this § 5.6) release(s) or place(s) on or under the Premises, the Building, or the land upon which the Building is located. This indemnity survives termination of this Lease. Promptly upon discovery, Tenant must notify Landlord in writing of any facts or circumstances that give rise to any claim by Tenant.

6. TENANT'S COVENANTS

6.1 Use of Premises

(a) Tenant must use the Premises only for the Permitted Uses set forth in § 1.1, provided, however, that Tenant has the right to use the Premises for other purposes if such use (i) is compatible with the other uses of the Building, as determined by Landlord in Landlord's reasonable discretion, (ii) does not materially increase the amount of visitor or employee traffic to and from the Premises, (iii) does not materially increase Landlord's cost to provide the services (including, without limitation, repairs and maintenance of the Premises and Building)

that this Lease requires or any other services currently provided to tenants of the Building, and (iv) is otherwise compatible with all other obligations of Tenant under this Lease.

(b) Tenant must not cause or permit any nuisance in the Building and must not conduct any activity within the Premises or Building that interferes with the rights of other tenants, occupants or users of the Building.

(c) Tenant covenants and agrees that Tenant must not do or permit anything to be done in or upon the Premises or Building, or bring anything on the Premises or Building that increases the rate of insurance on the Premises or Building above the standard rate applicable to Premises occupied for the Permitted Uses, or that voids such insurance. Tenant agrees that if Tenant does any of the foregoing, Tenant must promptly pay to Landlord, on demand, any resulting increase as additional rent, or Tenant must cease all activities that cause the increase or the voiding.

6.2 Care of Premises

(a) Tenant must not injure, deface, or commit waste in the Premises or any part of the Building. Tenant must exercise reasonable care to ensure that all systems, fixtures, and equipment at the Premises are used only for their respective intended purposes and that the electrical, mechanical, and structural systems of the Building and the Premises are not overloaded. Tenant must notify Landlord promptly of any damage to the Premises, malfunction of a system or fixture, or any other condition that requires repair by Landlord.

(b) Tenant shall be responsible for placing all trash and rubbish in the dumpsters provided by Landlord.

(c) In addition to all other covenants and agreements of Tenant contained herein, Tenant hereby covenants with Landlord that Tenant during the term of this Lease and for such further time as it shall hold the Premises or any part thereof will pay all charges for heat, air conditioning, hot and cold, gas, electricity, telephones, and all other utilities services exclusively serving the Premises.

(d) Tenant shall provide typical custodial/janitorial services to the Premises.

(e) Tenant further covenants and agrees that if any of Tenant's work on or modifications or improvements to the Premises cause the need for other modifications or improvements to the Premises pursuant to any applicable law, Tenant shall be responsible for making such additional improvements and modifications at Tenant's sole cost and expense; to pay all municipal, county, or state taxes assessed against the leasehold interest hereunder, or against personal property of any kind on or about the Premises; to pay to Landlord all of Landlord's costs and expenses incurred by Landlord in making any repairs, improvements or alterations to the Premises requested or demanded by Tenant, except those improvements required of Landlord pursuant to this Lease.

(f) Tenant further covenants that it is authorized to enter into this Lease, and that the signatories on behalf of Tenant have been duly authorized and empowered to sign this Lease by a vote of all required municipal agencies, boards and commissions.

(g) Tenant covenants that it shall obtain and maintain all licenses, permits and approvals required for the Permitted Use.

6.3 Hazardous Substance

(a) Tenant agrees that Tenant must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about the Premises, or to be transported to, from, or across the Premises.

(b) Nothing in this Lease prohibits Tenant from using minimal quantities of cleaning fluid and office or household and art supplies that constitute(s) a Hazardous Substance but are customarily

present in and about premises used for the Permitted Uses, provided that Tenant's use, including storage and disposal of such cleaning fluid and office or household or art supplies, is in compliance with all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

(c) If Tenant or Tenant's employees, agents, independent contractors, or invitees cause(s) the release or threatened release of any Hazardous Substance from the Premises, Tenant must promptly notify Landlord and, without cost to Landlord, take such action, or cause others to take such action, as is necessary to assess, remediate, or remove any Hazardous Substance, as and to the extent required by all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

(d) Subject to all limitations required by law, including without limitation M.G.L. c. 258, and after use of \$2,000,000 general liability insurance and casualty insurance, if applicable, Tenant shall indemnify Landlord and hold Landlord harmless from and against all loss, liability, damage and expense, including reasonable attorneys' fees, suffered or incurred by Landlord, whether as Landlord under this Lease or as owner of the Building and Land containing Premises, arising out of any act or omission of Tenant, its agents, employees, contractors, licensees, sublessees, invitees or guests, from and after the date hereof (i) under or on account of a violation of any Federal, state or local law, regulation or ordinance relating to Hazardous Substance; (ii) with respect to the presence, release or spill of any Hazardous Substance; and (iii) with respect to any other matter affecting the Premises within the jurisdiction of the Federal Environmental Protection Agency and/or Massachusetts Department of Environmental Protection or its successor. The obligations and indemnification and exculpation provisions contained in this subsection (d) shall survive the expiration or earlier termination of this Lease. Promptly upon discovery, Landlord must notify Tenant in writing of any facts or circumstances that give rise to any claim by Landlord.

6.4 Compliance with Applicable Laws and Removal of Liens

Tenant must comply with all laws, orders, and regulations of federal, state, county, and city authorities, and with any of Landlord's rules and regulations that are set forth in this Lease or that Landlord establishes, provided that they do not conflict with the provisions of this Lease, and further provided that they are delivered to Tenant and to the User Agency in the manner required for notices. Tenant has the right to defer compliance so long as Tenant contests in good faith the validity of any such law, order, or regulation by appropriate legal proceedings and first gives Landlord appropriate assurance, reasonably satisfactory to Landlord, against any loss, cost, or expense on account of such deferral, and provided that such contest must not subject Landlord to criminal penalties or civil sanctions, loss of property, liens against property, or civil liability. Tenant must not cause or allow any liens of any kind to be filed against the Premises. If any liens are filed, within 15 days after receiving written notice of such filing, Tenant, at Tenant's sole cost and expense, must take whatever action is necessary to cause such lien to be bonded off or released of record without cost to Landlord.

6.5 Assignment and Subletting

(a) Tenant must not assign, sublet, mortgage, pledge, or encumber this Lease (the result of any such action being referred to as a "Transfer") without Landlord's prior written consent, which

consent shall be in Landlord's reasonable discretion. By valid written instrument, any transferee must expressly assume, for the transferee and the transferee's successors and assigns, and for the benefit of Landlord, all of the obligations of Tenant under this Lease. Following such transfer, Tenant has no further obligations of Tenant under this Lease.

(b) Any request by Tenant for Landlord's consent to a Transfer must include (i) the name of the proposed transferee; (ii) the nature of the transferee's business and proposed use of the Premises; (iii) complete information as to the financial conditions and standing of the proposed transferee; and (iv) the provisions of the proposed Transfer. Tenant must promptly supply such additional information about the proposed Transfer and transferee as Landlord reasonably requests.

Landlord also has the right to meet and interview the proposed transferee.

(c) Landlord must advise Tenant in writing whether or not Landlord consents to a proposed Transfer within 30 days of receiving Tenant's request for such consent. If Landlord fails to so notify Tenant within said time period, Landlord is deemed to have given Landlord's consent to the proposed Transfer.

(d) The express or implied consent by Landlord to any Transfer does not constitute a waiver of Landlord's right to prohibit any subsequent Transfer.

(e) As used in this Lease, "assign" or "assignment" includes, without limitation, any transfer of Tenant's interest in the Lease by operation of law.

(f) Notwithstanding any contrary provisions of this § 6.5, in connection with any proposed Transfer, Landlord has the right to cancel and terminate this Lease if Tenant's request is to assign the Lease or to sublet more than 80% of the Premises; or, if Tenant's request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion of the Premises for the proposed duration of the sublease. Landlord must exercise this right in writing within 30 days of receiving Tenant's request for Landlord's consent to a proposed Transfer, and in each case, such cancellation or termination must occur as of the effective date of the proposed Transfer. In such event, Tenant must permit Landlord to enter into a direct lease with the proposed transferee.

(g) Landlord acknowledges and agrees that the use or occupation of all or part of the Premises by an agency of the Town of Brookline other than the User Agency named in § 1.1, or the substitution of another agency of town government for the User Agency named in § 1.1, is not a Transfer, provided that the Premises continue to be used for the Permitted Uses. Nevertheless, Tenant must advise Landlord, in writing, if any agency of Brookline other than the User Agency named in § 1.1 uses or occupies all or any portion of the Premises, or if there is a substitution of any agency of Brookline for the User Agency named in § 1.1.

6.6 Alterations and Additions

(a) Tenant has the right to make non-structural alterations or additions to the Premises (Tenant Alterations), provided that Tenant must first obtain Landlord's prior written consent, which Landlord must not unreasonably withhold, condition, or delay. Without limiting the foregoing, Landlord has the right to withhold Landlord's consent to any proposed Tenant Alterations that would violate any law, ordinance, code, or regulation of governmental authorities with jurisdiction, or any regulation of the Board of Fire Underwriters or any similar insurance rating body or bodies, or that would materially and adversely affect the appearance or value of the Building, or the mechanical, electrical, sanitary, or any other system of the Building.

(b) As a condition to giving Landlord's consent to Tenant Alterations, Landlord has the right to require that Tenant remove all or a portion of Tenant Alterations and to restore the Premises to

its former condition at the expiration or earlier termination of this Lease, provided that Landlord must designate all such items to be removed at the time Landlord gives Landlord's consent.

(c) As a further condition for Landlord's consent, Landlord has the right to require that, before the commencement of the work, Tenant submit to Landlord, for Landlord's approval, plans and specifications that reasonably identify and describe proposed Tenant Alterations. Landlord must review Tenant's plans and specifications, and inform Tenant, in writing, of Landlord's approval or disapproval within ten business days after submission by Tenant. If Landlord disapproves, Landlord must identify, in writing, each reason for disapproval and identify, in writing, each modification that must be made by Tenant in order to obtain Landlord's approval. If Landlord fails to so inform Tenant of disapproval within ten business days after submission by Tenant or fails to so identify each modification that is necessary to obtain Landlord's approval, Tenant's plans and specifications are deemed approved.

(d) Tenant must (i) do all such Tenant Alterations at reasonable times and in such manner so as not to unreasonably disturb other tenants and users of the Building, (ii) complete all such Tenant Alterations in accordance with any plans and specifications that Landlord approves and in a good and workmanlike manner, with materials in quality at least equal to the then-present construction, (iii) cause contractors that Landlord approves to perform all such Tenant Alterations, provided that Landlord's approval is not required for any contractor that Tenant selects pursuant to applicable public bidding laws of the Commonwealth of Massachusetts, (iv) perform and complete all such Tenant Alterations in compliance with all applicable laws, ordinances, codes, and regulations of governmental authorities, and with regulations of the Board of Fire Underwriters or any similar insurance body or bodies, and (v) perform and complete all such Tenant Alterations at Tenant's sole expense, including the cost of all design work, materials, labor, and state and local permits. Landlord's approval of any plans and specifications, or changes in plans and specifications, whether expressly given or resulting from Landlord's inaction, must never be construed as a waiver of any of the requirements of this paragraph.

(e) At all times during the construction of any Tenant Alterations, Tenant must cause Tenant's contractors and any subcontractors to maintain Workers' Compensation insurance covering the persons employed in connection with such Tenant Alterations as required by law and, if the estimated construction cost of such Tenant Alterations exceeds \$25,000, to secure and maintain (i) commercial general liability insurance for the mutual benefit of Landlord and Tenant, with limits that Landlord reasonably establishes, to protect against the risks or nature of the construction to be undertaken, or with limits customarily carried in connection with similar work undertaken in buildings similar to the Building in the same locality, and (ii) such builders-risk insurance protecting the interests of Landlord and Tenant against damage resulting from such Tenant Alterations in amounts that Landlord reasonably deems necessary. Tenant must not permit Tenant's contractors or any subcontractor to commence any work until all required insurance coverage has been obtained, and certificates evidencing such coverage have been delivered to and approved by Landlord. Each insurance policy must be with a company authorized to do business in Massachusetts and must provide that Landlord be given at least 20 days prior, written notice of any alteration or termination of coverage.

(f) Landlord has the right to inspect the work as the work progresses and to require Tenant to remove any Tenant Alterations that do not conform to the approved plans and specifications. Tenant must not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant, and Tenant must promptly cause any such lien to be released of record or bonded off without cost to Landlord.

(g) All Tenant Alterations must remain the exclusive property of Tenant until Tenant vacates the Premises. At any time, at Tenant's sole option, Tenant has the right to remove any Tenant Alteration and restore the Premises to the same conditions as before the Tenant Alteration, reasonable wear and tear, and damage by fire or other casualty, excepted. Any Tenant Alteration remaining on the Premises after Tenant vacates the Premises becomes the property of Landlord without payment.

6.7 Yield Up at Termination of Lease

At the expiration or other termination of this Lease, Tenant must remove all of Tenant's effects from the Premises. Tenant must surrender and deliver up the Premises to Landlord in the condition in which Tenant is required to maintain the Premises, as set forth in this Lease, reasonable wear and tear, and damage by fire or other casualty, excepted. Any personal property of Tenant remaining upon the Premises after Tenant has surrendered possession of the Premises becomes the property of Landlord. If Landlord removes and disposes of any remaining property, Tenant agrees to pay the reasonable costs of removal and disposal, less any salvage value that Landlord actually recovers, provided that such claim is submitted to Tenant, in writing, within 30 days after Tenant vacates the Premises.

7. CASUALTY; EMINENT DOMAIN

7.1 Fire or Other Casualty

(a) If fire or other casualty damages the Premises or any other portion of the Building to which Tenant has appurtenant rights under § 2.1 (and that is necessary for reasonable access to or egress from the Premises, or for Tenant's use and enjoyment of the Premises, as this Lease contemplates), then, subject to the next paragraph, Landlord must proceed with diligence to establish and collect all valid claims that arise against Landlord's insurers, based upon any such damage and, subject to the then applicable building codes, zoning ordinances, and other legal requirements, Landlord must proceed with diligence to repair such damage or destruction and to restore the Premises and Building as nearly as practicable to their condition before such casualty, at Landlord's sole expense (but, provided Landlord has maintained the casualty insurance that this Lease requires, only to the extent of insurance proceeds that Landlord's insurers made available to Landlord by the insurer and any mortgagee of the Building). Notwithstanding the forgoing, Landlord has no duty to repair any damage to any Tenant Alterations unless the damage was caused by the negligence, breach of this Lease, or willful misconduct of Landlord.

(b) Notwithstanding the preceding paragraph, if either Landlord or Tenant determines, in Landlord's or Tenant's commercially reasonable business judgment, that Landlord cannot be expected to repair the damage to the Premises or to the Building within 120 days from the date of the fire or other casualty, due to the character of such damage, or if the remainder of the Term is less than one year, then either Landlord or Tenant has the right to terminate this Lease. Tenant also has the right to terminate this Lease if Landlord, having notified Tenant of Landlord's intention to repair the damage to the Premises or Building, as provided in this Lease, fails to complete such repairs within 120 days after a fire or other casualty, subject to delays for Force Majeure Events. If neither Landlord nor Tenant exercises a right to terminate this Lease, as provided in this § 7.1, a proportionate amount of Rent must be abated until the affected portion

of the Premises, Landlord's services, or both has or have been restored as required under this Lease

(c) The rights of Landlord and Tenant to terminate this Lease if there is a fire or other casualty are subject to the following notice provisions: Within 30 days after the occurrence of a fire or other casualty, Landlord must notify Tenant of Landlord's election to terminate this Lease in accordance with the preceding paragraph. Tenant must notify Landlord of Tenant's election to terminate this Lease in accordance with the preceding paragraph (i) within 30 days after the occurrence of a fire or casualty or (ii) within 30 days after the expiration of the 120-day period given to Landlord to repair the Premises if this Lease is not terminated and Landlord fails to complete such repair within said 120-day period. Any such termination of this Lease by Landlord or Tenant is effective no earlier than 30 days after the giving of notice. Unless so terminated, this Lease remains in full force and effect, subject, however, to other provisions of this § 7.1.

(d) If any damage to the Premises or the Building, or if Landlord's repair of either or both (i) renders any part of the Premises unfit for Tenant's use and occupancy or otherwise prevents Tenant's use and occupancy of such part of the Premises, or (ii) causes a material cessation or reduction in Landlord's services under this Lease, and (iii) Tenant continues to use and occupy the unaffected portion of the Premises, a proportionate amount of Rent must be abated until the affected portion of the Premises, Landlord's services, or both has or have been restored as required under this Lease.

7.2 Eminent Domain

(a) (i) If all of the Premises are taken by eminent domain; or (ii) if any of the Premises is taken by eminent domain and, in Landlord's reasonable opinion, it would be impractical or the award is insufficient to restore the remainder of the Premises; then, in any such event, this Lease shall terminate and all obligations hereunder shall cease as of the date upon which possession is taken by the taking agency and the Rent and Additional Rent herein reserved shall be apportioned and paid in full by Tenant to Landlord to that date and all Rent and Additional Rent prepaid for periods beyond that date shall forthwith be repaid by Landlord to Tenant.

(b) If there is a partial taking and this Lease has not been terminated pursuant to subparagraph (a) above, Landlord shall restore the Premises and the improvements which are part of the building to a condition and size as nearly comparable as reasonably practicable to the condition and size thereof immediately prior to the date upon which possession shall have been taken by the taking agency; provided, however, that Landlord's restoration obligation shall be limited to the net amount of the award actually received by Landlord, after deducting the reasonable costs of obtaining said award. If Landlord shall fail to complete such restoration within four (4) months after the date of commencement of such work, subject, however, to delays from any Tenant Delay or Force Majeure Events, Tenant shall have the right to terminate this Lease by giving Landlord thirty (30) days prior written notice of its election to do so, in which event this Lease shall terminate as of the thirtieth (30th) day after the date of Tenant's notice with the same force and effect as if such date were the date originally established as the expiration date hereof, unless Landlord shall have completed such restoration work within such thirty (30) day period. If the award is more than adequate to cover the cost of restoration and Landlord's expenses in collecting the award, any excess award shall be retained by Landlord provided taking agency has compensated Tenant for any and all moving and relocation costs while Landlord restores Premises. Notwithstanding the foregoing, within the sixty (60) day period after first receiving

notice of taking, Landlord will notify Tenant in writing as to whether restoration would be practical or the anticipated net amount of the award to be received by Landlord is sufficient for Landlord to complete the restoration provided in this subparagraph (b) ("Landlord's Taking Notice"). If Landlord's Taking Notice shall state that the award is insufficient or the restoration impractical, as aforesaid, either party shall have the right to terminate this Lease and all the unaccrued obligations of the parties hereunder by sending a written notice to the other party of such termination date no less than ten (10) days after its transmission; provided, however, that if the taking occurs prior to the last year of the Lease Term, Tenant may require Landlord to withdraw the notice of termination by agreeing to pay the cost of restoration in excess of the net award and by giving Landlord adequate security for such payment prior to the termination date specified in Landlord's notice of termination. If the Landlord's Notice of Taking states that the net award is sufficient and the restoration is practical, the Landlord shall include in its notice Landlord's estimate of the period of time required to complete the restoration.

(c) Abatement of Rent. Rent and Additional Rent shall abate to the extent and during the time the Premises are rendered untenable due to a taking. Such Rent and Additional Rent shall abate in such proportion as the part of the Premises rendered untenable bears to the total Premises, while such repairs are being made. Following the completion of restoration, if this Lease has not been terminated, the obligations of Landlord and Tenant under this Lease shall be unaffected by such taking except that there shall be an equitable abatement of the Rent in direct proportion to the extent of the Premises so taken.

(d) Landlord reserves, and Tenant hereby grants and assigns to Landlord, all rights which Tenant may have for damages or injury to the Premises or to the leasehold hereby created by any taking by eminent domain, except for damage or injury to Tenant's personal property, fixtures and equipment or for moving or relocation expenses, which may be separately awarded to Tenant by the taking authority. Tenant shall execute and deliver to Landlord such confirmatory instruments of this assignment as Landlord may from time to time request.

8. INDEMNIFICATION AND INSURANCE

8.1 Indemnification of Tenant by Landlord

Landlord must indemnify, save harmless, and defend Tenant from any and all liability, claim, or cost arising, in whole or in part, out of any injury, loss, or damage to any person or property while on or within the Premises, Building, or appurtenant areas if caused by any negligence, breach of this Lease, or willful misconduct of Landlord or Landlord's employees, agents, contractors, servants, or invitees. This indemnity and hold-harmless agreement includes indemnity against all costs, expenses, and liabilities that Tenant incurs in connection with any such injury, loss, or damage, or any such claim, or any proceeding brought thereon or in defense thereof, including, but not limited to, reasonable legal fees and expenses charged by private counsel that Tenant employs. This indemnity survives the Expiration Date.

8.2 Insurance Coverage to Be Maintained by Landlord

(a) At all times after the Date of Occupancy and during the Term, Landlord must keep in force a commercial general liability insurance policy insuring Landlord against all claims and demands for personal injury or damage to property that are claimed to have occurred upon or about the Premises, Building, or appurtenant areas. This policy must be written on an occurrence basis to

provide protection in an amount not less than \$2,000,000 combined-single-limit for personal injury, death, and property damage, with a so-called "broad-form" endorsement and contractual liability coverage insuring Landlord's performance of the indemnity agreement set forth in § 8.1.

(b) Landlord also must maintain casualty insurance for the Building (including all fixtures and equipment that Landlord installs, and all alterations and additions that Landlord makes) insuring Landlord against loss or damage that fire and other risks, which are customarily contemplated by "all-risks" endorsements of insurance policies, cause (with such additional endorsements as are necessary to include coverage for vandalism and malicious conduct, floods, boiler explosions, water damage from boilers, plumbing, etc., earthquakes, debris removal, and demolition), in an amount equal to 100% of the replacement cost of the Building (exclusive of foundations and footings) and the Building's fixtures and equipment.

(c) At all times during the Term, Landlord must maintain, and must cause Landlord's contractors and any subcontractors to maintain, Workers' Compensation insurance, as required by law, covering each person who is employed by Landlord, and by Landlord's contractors and any subcontractors, to provide labor, services, or both in connection with the Premises, the Building, the property on which the Building is situated, or in connection with any combination of two or more of the Premises, the Building, and the property on which the Building is situated.

(d) Landlord must take out each insurance policy with insurers qualified to do business in the Commonwealth, and each such insurance policy must have only such deductibles as are reasonable and customary.

(e) On or before the Date of Occupancy, Landlord must provide Tenant with a certificate of insurance, in a form reasonably satisfactory to Tenant, for each required policy of insurance, and must provide Tenant with a certificate evidencing renewal of each such policy at least 20 days before the policy's expiration. Landlord shall provide Tenant with a certificate of insurance providing that the policy must not be canceled, terminated, reduced, or changed in any material respect without at least 20 days prior written notice to Tenant.

Tenant shall pay to Landlord as additional rent all increases in insurance premiums caused by Tenant's change in use of Premises or modifications and improvements to the Premises after the Date of Occupancy.

8.3 Tenant's Self-Insurance

Landlord and Tenant acknowledge and agree that Tenant is self-insured and that this Lease does not require Tenant to procure or maintain insurance of any kind for payment of damages to Landlord or to any other party. Notwithstanding any other provision of this Lease, but subject to the provisions of § 13.1, the provisions of G. L. c. 258 and any successor statute govern Tenant's liability for injuries to persons or property.

8.4 Tenant's Personal Property; Assumption of Risk

All of the furnishings, equipment, effects, and personal property of every kind and nature of Tenant, and of all persons claiming by, through, and under Tenant, that, during the Term, are on the Premises or in the Building at the sole risk and hazard of Tenant, except for damage or loss caused by Landlord's negligence, breach of this Lease, or willful misconduct. If fire, water, or other casualty destroys or damages the whole or any part of such personal property, no part of such loss or damage is to be charged to or to be borne by Landlord unless such loss or damage is due to the negligence, breach of this Lease, or willful misconduct of Landlord.

9. DEFAULT

9.1 Event of Default by Tenant

Each of the following is an "Event of Default" by Tenant:

- (a) Tenant fails to pay, when due, any sum of money due to Landlord by Tenant under this Lease, whether such sum is an installment of Rent or any other payment or reimbursement, and such failure continues for a period of ten business days after written notice from Landlord.
- (b) Tenant fails to comply with any other obligation or covenant of Tenant under this Lease, and fails to cure such failure within 30 days after receiving written notice from Landlord specifying such failure, or for those failures that cannot be cured within such 30-day period, if Tenant fails to commence such cure within such 30-day period and thereafter fails to diligently pursue such cure to completion.
- (c) Any warranty, representation, or statement that Tenant makes in this Lease is incorrect or misleading in any material respect on the date made.

9.2 Remedies of Landlord

- (a) Upon the occurrence of an Event of Default by Tenant, in addition to the remedies described in § 9.3 and any other remedies available to Landlord at law or in equity, Landlord has the right to terminate this Lease upon not less than 30 days prior written notice to Tenant. Upon such termination, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, and Tenant must then quit and surrender the Premises to Landlord as provided in § 6.7, but Tenant remains liable for damages arising out of such Event of Default, as provided in this Lease.
- (b) Upon termination of this Lease by Landlord pursuant to this § 9.2, Tenant must immediately pay to Landlord Rent payable by Tenant to Landlord up to the Expiration Date, and Tenant remains liable for any breach of Tenant's obligations under this Lease occurring before the Expiration Date. In addition, Tenant is liable to pay Landlord, as damages, the aggregate of Rent remaining in the Term.
- (c) Tenant must pay Rent in the same manner, to the same extent, and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence, Landlord must credit Tenant with the net rents that Landlord actually receives from a reletting of the Premises. Net rents must be determined by deducting from the gross rents, as and when Landlord receives the gross rents from such reletting, the reasonable expenses that Landlord incurs or pays in terminating this Lease and the reasonable expenses that Landlord incurs or pays in connection with the reletting of the Premises that are allocable to the Term, including reasonable tenant fit out costs and allowances, brokerage fees, and attorneys' fees. In no event is Tenant entitled to receive any excess of such net rents over the sums that Tenant must pay to Landlord under this Lease. If Landlord terminates this Lease by reason of an Event of Default by Tenant, Landlord must take reasonable steps to mitigate Landlord's damages, including making reasonable efforts to relet the Premises for a period that is equal to, shorter, or longer than the Term.

9.3 Cure by Landlord

If Tenant fails to perform any of Tenant's obligations, agreements, or covenants under this Lease, and if Tenant does not cure such failure within 30 days after written notice from Landlord

specifying the failure or, for those failures that are incapable of being cured within such 30-day period, if Tenant fails to commence such cure within said 30-day period and thereafter to diligently pursue such cure to completion, Landlord, at Landlord's sole option, without waiving or limiting any claim for damages, and at any time thereafter, has the right to perform such obligation of Tenant, provided that Landlord, after notice to Tenant (including telephonic notice), has the right to cure any such failure before the expiration of the waiting period described above if the curing of such breach before the expiration of the waiting period is reasonably necessary to prevent injury or damage to persons or property, including Landlord's interest in the Premises or Building. If Landlord makes any expenditure or incurs any obligation for the payment of money in order to cure Tenant's failure to perform, such sums paid or obligations incurred, to the extent they are reasonable, are due from Tenant to Landlord as additional rent. Landlord must deliver to Tenant an itemized statement of all costs that Landlord incurs to cure Tenant's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Tenant must pay any additional rent due by reason of such costs with the second installment of Rent due after Landlord delivers such statement to Tenant.

9.4 Event of Default by Landlord

Each of the following is an "Event of Default" by Landlord:

- (a) Landlord fails to comply with any obligation or covenant of Landlord under this Lease and fails to cure such failure within 30 days after receiving written notice from Tenant specifying such failure, or for those failures that cannot be cured within such 30-day period, if Landlord fails to commence such cure within said 30-day period and thereafter to diligently pursue such cure to completion.
- (b) Any warranty, representation, or statement that Landlord makes in this Lease is incorrect or misleading in any material respect on the date made.

9.5 Remedies of Tenant

Upon the occurrence of an Event of Default by Landlord, Tenant has the remedies described in § 9.6, if applicable, given the nature of the Event of Default, and any other remedy available to Tenant at law or in equity. In addition, if the Event of Default by Landlord is of such a nature that the Event of Default materially interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and Landlord fails to fully cure or eliminate the cause or causes of such Event of Default within 30 days following written notice from Tenant stating that such an Event of Default has occurred(or, for those failures that are incapable of being cured within such 30-day period, if Landlord fails to commence such cure within said 30-day period and thereafter fails to diligently pursue such cure to completion), then Tenant also has the right to terminate this Lease by giving Landlord a written Notice of Termination that Tenant must give at least ten days before the Expiration Date stated in such Notice of Termination. Upon the Expiration Date, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, provided, however, that Landlord remains liable for any breach of Landlord's obligations under this Lease occurring before such Expiration Date, and Tenant is required to comply with the provisions of § 6.7.

9.6 Cure by Tenant

If Landlord fails to perform any obligation, agreement, or condition of Landlord under this Lease, including, but not limited to, failing to make any required repairs or to provide any Building services as herein required, after the period of time equal to any applicable Force Majeure Events and if such failure interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and if Landlord does not cure such failure within 30 days after written notice from Tenant specifying the failure (or, for those failures that are incapable of being cured within such 30-day period, if Landlord fails to commence such cure within said 30-day period and thereafter fails to diligently pursue such cure to completion), Tenant, at Tenant's sole option, and without waiving or limiting any claim for damages, at any time thereafter has the right to perform such obligation for Landlord, provided that Tenant has the right to cure any such failure before the expiration of the waiting period described above (but after notice to Landlord, including telephonic notice) if the curing of such failure before the expiration of the waiting period is reasonably necessary to prevent injury to persons or property. If Tenant makes any expenditure or incurs any obligation for the payment of money in order to cure Landlord's failure to perform as aforesaid, such monies paid or obligations incurred, to the extent they are reasonable, are deemed paid or incurred on behalf of Landlord, and Landlord agrees to reimburse Tenant therefor or save Tenant harmless therefrom. Tenant must deliver to Landlord an itemized statement of all costs that Tenant incurs to cure Landlord's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Landlord must promptly pay any outstanding bills for labor, materials, or both, and, within 30 days of Tenant's demand, must reimburse Tenant for any amount that Tenant pays on behalf of Landlord.

9.7 Remedies Cumulative

Any and all rights and remedies of Landlord and Tenant under this Lease, at law, and in equity, are cumulative and are not to be deemed incompatible with each other, and Landlord and Tenant each has the right to exercise any two or more such rights and remedies simultaneously, to the extent permitted by law.

10. MORTGAGE PROVISIONS

10.1 Estoppel Certificate

Within 10 business days from receipt of a written request from Landlord or any mortgagee of the Building, Tenant must execute and deliver to Landlord a certificate in the form of the then-current *Commonwealth of Massachusetts Estoppel Certificate* that indicates any then-existing exceptions.

10.2 Subordination

Upon the written request of Landlord, Tenant must subordinate this Lease and its lien to the lien of any future mortgage(s) upon the Premises that is (are) held by a bank, insurance company, governmental agency, or other financial institution (or more than one), provided that Landlord and the holder(s) of such mortgage(s) executes and delivers to Tenant a *Commonwealth of Massachusetts Subordination, Non-Disturbance, and Attornment Agreement*. The word "mortgage," as used in this Lease, includes mortgages, deeds of trust, and all similar instruments, and all modifications, extensions, renewals, and replacements thereof.

10.3 Recognition

As a condition precedent to Tenant's execution of this Lease, Landlord must cause each bank, insurance company, governmental agency, or other financial institution, which is a holder of the lien of any existing mortgage upon the Premises, to join Landlord and Tenant in the execution and delivery of a *Subordination, Non-Disturbance, and Attornment Agreement*. The word "mortgage," as used in this Lease, includes mortgages, deeds of trust, and all similar instruments, and all modifications, extensions, renewals, and replacements thereof. If Landlord does not satisfy such condition precedent in the prescribed manner, then Landlord thereby represents to Tenant that there is no such existing mortgage, with the express understanding that Tenant relies on such representation as a material representation inducing Tenant to execute this Lease.

11. HOLDING OVER

If Tenant remains on the Premises beyond the expiration date or earlier termination of this Lease, such holding over shall not be deemed to create a tenancy at will. Rather Tenant shall be a tenant at sufferance only, at a daily rate equal to 150% the Base Rent, Additional Rent and other charges for the last year under this Lease. This paragraph does not create any right for Tenant to remain on the Premises after the expiration or earlier termination of this Lease, nor shall it limit any of Landlord's other rights as provided in the Lease or otherwise permitted by law. However, during said hold over period all other conditions of this Lease to be performed by Tenant shall continue in force.

12. FISCAL YEAR APPROPRIATIONS AND AUTHORIZATIONS

12.1 Tenant's Obligations Subject to Appropriations and Authorizations

The fiscal year of the Town is the 12-month period ending June 30 of each year. Appropriations and authorizations for expenditures by departments of the Town are made on a fiscal-year basis. The obligations of Tenant under this Lease, and under any modification, extension, or renewal of this Lease for any fiscal year, are subject to the appropriation and the allotment of sufficient funds to the User Agency.

12.2 Termination of Lease for Lack of Appropriations and Authorizations

If, for any fiscal year during the Term, sufficient funds for the discharge of Tenant's obligations under this Lease are not appropriated and authorized, or if, during any fiscal year during the Term, funds for the discharge of Tenant's obligations under this Lease are reduced, then Tenant has the right to terminate this Lease by 30 days advance written notice to Landlord without any liability whatsoever for damages, penalties, or other charges arising from early termination, and without further recourse to either party; provided, however, that Tenant must pay all Rent and any other charges due to Landlord for the period before Tenant's surrender of the Premises, and that Tenant must comply with the provisions of § 6.7 of this Lease.

13. PERSONAL LIABILITY

13.1 Liability of Tenant

No official, employee, or consultant of the Town or the Public Schools of Brookline is ever personally liable to Landlord, or to any successor-in-interest to Landlord, or to any person claiming through or under Landlord for or on account of any Event of Default by Tenant or failure by Tenant to perform any of Tenant's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Tenant under this Lease, or on any claim, cause, or obligation whatsoever under this Lease.

13.2 Liability of Landlord

No trustee, beneficiary, member, manager, partner, director, officer, shareholder, or employee of Landlord is ever personally liable to Tenant, or to any successor-in-interest to Tenant, or to any person claiming through or under Tenant for or on account of any Event of Default by Landlord or failure by Landlord to perform any of Landlord's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Landlord under this Lease, or on any claim, cause, or obligation whatsoever under this Lease. Tenant must look solely to Landlord's interest in the Premises, the Building, and the land upon which the Building is located, and to the rents and profits derived from the Premises, the Building, and said land for the satisfaction of any claim or judgment against Landlord under this Lease. Notwithstanding the foregoing, nothing in this paragraph limits any right that Tenant otherwise has to obtain injunctive relief against Landlord, or to claim the proceeds of any insurance maintained by Landlord for Tenant's benefit or any condemnation proceeds to which Tenant is entitled under this Lease. In addition, nothing in this § 13.2 limits the recourse of Tenant on account of willful fraudulent conduct.

14. NOTICE

14.1 Notice

(a) Unless otherwise expressly permitted under this Lease, all notices or other communication required or permitted to be given under this Lease must be in writing, signed by a duly authorized representative of the party giving notice and given by hand delivery (including, without limitation, courier and overnight-delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested.

(b) Unless otherwise expressly stated in this Lease, notices must be addressed and sent to Landlord at the address appearing for Landlord in § 1.1 and to Tenant at the address appearing for Tenant in § 1.1, with copies to the Brookline Office of Town Counsel, 333 Washington Street, 6th Floor, Brookline, MA 02445.

(c) Under this § 14, Landlord and Tenant, at any time and from time-to-time, each has the right to designate a different address or different addresses to which notices must be sent.

(d) All notices given in accordance with §§ 14.1 (a), 14.1 (b), and 14.1 (c) are deemed given, for all purposes, (i) on the date shown on the receipt for delivery or (ii) as of the date notice is sent if delivery is refused or could not be attained.

14.2 Special Notice Where Failure to Reply Results in Consent or Approval

If the consent or approval of Landlord or Tenant is deemed under this Lease to be given to a request or submission following a period of non-reply, such consent or approval is effective only

if the outside of the envelope containing the request or submission bears the following legend with the appropriate time period filled in, printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

**NOTICE: THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN ____ DAYS RESULTS IN AUTOMATIC
APPROVAL.**

15. FORCE MAJEURE

Whenever this Lease requires performance on or by a fixed date, or within a fixed time or a reasonable time, if war, fire, flood, or other casualty, or strike, governmental regulation (including any delay in the payment of Rent caused by or resulting from an act or an omission of any branch, agency, or department of the government other than the User Agency), weather, or any other event that is beyond the reasonable control of the party whose performance is required (each a Force Majeure Event) delays performance, the time for performance must be extended for a period that is equal to the duration of the delay.

16. MISCELLANY

16.1 Extension

Tenant, at its sole option, can extend the Lease for two additional two-year terms (Extension Terms) under the same terms set forth herein, provided that Tenant notifies Landlord of its election to extend at least 180 days prior to the beginning of such extension period, with Base Rent as follows.

Year One: \$32.46 per square foot x Useable Area of Premises

Year Two: \$33.43 per square foot x Useable Area of Premises

Second Extension Term:

Year One: \$34.44 per square foot x Useable Area of Premises

Year Two: \$35.47 per square foot x Useable Area of Premises

16.2 Entire Agreement

This Lease contains all of the agreements between Landlord and Tenant with respect to the subject matter of this Lease and supersedes all prior writings and dealings between Landlord and Tenant with respect to this Lease.

16.3 Changes in Lease

The provisions of this Lease must not be modified in any manner except by a written instrument signed, sealed, and mutually agreed upon by all the parties to this Lease and approved as required by law. No such instrument is void for lack of a recital of consideration.

16.4 Binding Agreement

This Lease binds and inures to the benefit of the parties to this Lease and to their respective representatives, successors, and assigns. All provisions of this Lease must be construed as covenants running with the land.

16.5 Governing Law

This Lease must be construed and governed by the laws of the Commonwealth of Massachusetts. Landlord and Tenant agree to bring any Federal or State legal proceedings arising under this Lease, in which the Town of Brookline or the User Agency is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

16.6 Waiver

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease does not prevent a subsequent act, that would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease is deemed to have been waived by any party unless such waiver is in writing and signed by an authorized representative of the party to be bound by such waiver.

16.7 No Broker

Landlord and Tenant each represents and warrants to the other that no broker, agent, commission salesman, or other person has represented Landlord or Tenant in connection with the procurement or consummation of this Lease.

16.8 Rights and Remedies not Exclusive

Unless otherwise expressly stated in this Lease, no mention in this Lease of any specific right or remedy precludes Landlord or Tenant from exercising any other right, having any other remedy, or maintaining any action to which Landlord or Tenant otherwise is entitled, either at law or in equity.

16.9 Accord and Satisfaction

Acceptance by Landlord of a lesser sum than Rent then due must not be deemed to be other than on account of the earliest installment of such Rent due, and any endorsement or statement on any check of Landlord or Tenant, or any letter accompanying any check or payment from either Landlord or Tenant to the other, must not be deemed an accord and satisfaction, and Landlord and Tenant each has the right to accept such check or payment without prejudice to such party's right to recover any balance due with respect to such payment or pursue any other remedy provided in this Lease.

16.10 Debarred or Suspended Contractors

Landlord must not accept bids or proposals from, or enter into any contract with, any person or firm for the construction (including but not limited to the Landlord's Improvements), repair, or maintenance of the Premises if such person or firm is debarred or suspended from contracting with the Commonwealth of Massachusetts, with the government of the United States of America, or with both under any applicable statute or regulation, or is subject to a stop-work order issued by any governmental authority with jurisdiction under any applicable statute or regulation. Landlord must require each person and firm with whom Landlord contracts for the construction,

repair, or maintenance of the Premises to agree with Landlord not to accept bids or proposals from, or enter into or continue any contract with, any such debarred or suspended person or firm, or from or with any person or firm subject to any such stop-work order, for all or any part of the construction (including but not limited to the Landlord's Improvements), repair, or maintenance of the Premises, and Landlord must strictly enforce each such agreement.

16.11 Time of Essence

Time is of the essence to this Lease and to each of its provisions.

16.12 Affirmative Action; Non-discrimination in Hiring and Employment

Landlord must comply with all federal and state laws, rules, and regulations promoting fair-employment practices or prohibiting employment discrimination and unfair-labor practices and must not discriminate in the hiring of any applicant for employment or demote, discharge, or otherwise subject any qualified employee to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, gender identity, as defined by chapter 199 of the Acts of 2011, or for exercising any rights afforded by law.

16.13 Severability

If any provision of this Lease is declared to be illegal, unenforceable, or void, then Landlord and Tenant are relieved of all obligations under that provision (or the application of that provision under circumstances in which that provision is illegal or unenforceable), provided, however, that the remainder of this Lease must be enforced to the fullest extent permitted by law.

16.14 Notice of Lease

Upon the request of Tenant, Landlord must execute and deliver to Tenant a recordable notice of this Lease.

16.15 No Agreement until Signed

No legal obligation arises with respect to the Premises or other matters covered by this Lease until this Lease is executed by Landlord and by the Town of Brookline and the Public Schools of Brookline and delivery is made by and to each.

16.16 Town or School Employees Barred from Interest

No official, employee, or consultant of the Town of Brookline or the Public Schools of Brookline must ever have any personal interest, direct or indirect, in this Lease or in Landlord, or participate in any decision relating to this Lease that affects the personal interest of such official, employee, or consultant, or that affects the interest of any corporation, partnership, or association in which such official, employee, or consultant is, directly or indirectly, interested.

16.17 Paragraph Headings

The paragraph headings in this Lease are for convenience of reference only and in no way define, increase, or limit the scope or intent of any provision of this Lease.

16.18 Counterparts

This Lease is executed in multiple counterparts, each such counterpart is an original for all intents and purposes, and all such counterparts together constitute one and the same Lease.

16.19 Rider, Exhibits, and Other Accompanying Documents

Each rider, exhibit, and other accompanying document is an integral part of this Lease for all lawful intents and purposes.

16.20 CORI Review

Pursuant to G.L. c. 71, s. 38R, Landlord shall conduct a state and national fingerprint based criminal history and CORI review of any current or prospective employee or volunteer who may have direct and unmonitored contact with children using or occupying the Premises or shared use areas.

16.21 Tenant's Exclusive use of Bathrooms

Tenant shall have exclusive use of the bathrooms on the Premises at all times during which Tenant is using the Premises.

16.22 Taxes

Landlord is responsible for all taxes on the Building and parcel. By the execution hereof, Landlord certifies, under penalties of perjury, that it has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

16.23.

Landlord's liability for repair and improvements shall always be limited to the cost of making such repair or accomplishing such maintenance or repair. Irrespective of any provision in this Lease to the contrary, in no event shall Landlord or Tenant ever be liable to the other for any consequential, incidental or indirect damages.

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Board of Selectmen of the Town of Brookline and the School Committee of the Town of Brookline, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

By: Debra O'Boy

Printed Name: Deborah O'Boy

Title: Manager

TENANT: TOWN OF THE BROOKLINE ACTING BY AND THROUGH ITS BOARD
OF SELECTMEN AND SCHOOL COMMITTEE

Board of Selectmen

Paul Walsh

Nancy Daly

Bruce

Barry A

Nancy S. Heller

School Committee

Chris Leach

Julia Chalupka

Bob

Michael

Rebecca Stone

Approved as to Matters of Form:

John J. Buchheit, Associate Town Counsel
Town of Brookline

Exhibit A

Exhibit B

ADDITIONAL RENT.

(a) Taxes. Tenant agrees that during the original term of this Lease and for such further time as Tenant shall hold the Premises or any part thereof, Tenant shall pay to Landlord as Additional Rent its pro-rata share of all taxes, betterments and assessments whatsoever, which may be payable for or in respect of the Building and Land containing the Premises, or any part thereof, during the term of this Lease, and for such further time as Tenant shall hold the Premises or any part thereof, Landlord hereby agreeing to furnish Tenant with copies of all bills for such taxes, betterments and assessments. In addition to the foregoing, Tenant shall be solely responsible for all personal property taxes of every nature imposed upon all fixtures, equipment and other personal property of every nature on the Premises. In the event that Landlord shall receive any abatement or refund of said taxes for any tax year for which Tenant shall have paid to Landlord any amount for said taxes, Tenant shall be entitled to receive from Landlord the amount thereof, less, however, the reasonable expenses (including without limitation reasonable attorney's fees) of Landlord incurred in obtaining such abatement or refund.

(b) Insurance. Landlord shall maintain policies of comprehensive general liability insurance and casualty insurance with limits for personal injury and property damage of \$2,000,000 each occurrence and \$2,000,000 in the aggregate. Landlord shall maintain and keep in force during the term of the Lease a policy or policies of insurance covering the loss or damage of the Premises. Insurance in addition to the aforesaid coverage, can be charged as Additional Rent, provided such additional insurance is represented in the current insurance line item shown in Exhibit C and is not in addition thereto. Tenant further agrees that during the original term of this Lease and for such further time as Tenant shall hold the Premises, or any part thereof, Tenant shall pay to Landlord as Additional Rent its pro-rata share of Landlord's total costs incurred for Landlord's casualty insurance on the Building and land containing the Premises as well as liability coverage as further described in §8.2 of this Lease, provided said cost is represented in the current insurance line item in Exhibit C and is not in addition thereto.

(c) Operating Expenses. Tenant further agrees that during the Initial Term of this Lease and for such further time as Tenant shall hold the Premises, or any part thereof, Tenant shall pay to Landlord as Additional Rent, its pro-rata share of the expenses provided in Landlord's Lease Price Proposal, attached hereto as "Exhibit C" ("Operating Expenses"). Landlord's Operating Expenses shall include all reasonable and customary expenses paid or incurred by or on behalf of the Landlord (whether directly or through independent contractors) in accordance with sound management practice, in connection with maintaining and repairing walkways, sidewalks, drives, parking areas, gas, water/sewer, electrical, and other utility connections, conduits, pipes and mains; snow and ice removal from the common parking areas, drives and walkway areas serving the Building; utility bills for common areas including elevators, exterior and interior lighting, electricity, fuel, gas, heating and cooling costs; costs and expenses related to landscaping and grounds maintenance; inspections and maintenance of common alarm systems, fire detection and suppression systems; security; exterior window cleaning and other cleaning services; labor, which, in accordance with sound management principles respecting the operation of the

Premises, Building and exterior common areas, are properly chargeable to the operation, maintenance and repair of the Premises, Building and exterior common areas; the maintenance and repair cost of equipment and systems for common use or for servicing common areas of the Building and Land;; commercially reasonable insurance deductibles; If Landlord incurs Operating Expenses for the Building or Property together with one or more other buildings or properties, the shared costs and expenses shall be equitably prorated and apportioned on a consistent basis between the Building and Property and the other buildings or properties.

Operating Expenses shall include all other reasonable and customary expenses, including without limitation, management fees, which would be considered as an expense of maintaining, operating, or repairing the Building and Property under sound accounting principles. Irrespective of the foregoing, the term Operating Expenses shall not include the following:

(1) Any cost or expense to the extent to which Landlord is paid or reimbursed (other than as a payment for Operating Expenses), including, but not necessarily limited to, (i) work or services performed for any tenant at the tenant's cost, (ii) the cost of any item for which Landlord is paid or reimbursed by insurance, warranties, service contracts, condemnation proceeds or otherwise, (iii) increased insurance or taxes assessed specifically to any tenant of the Property, (iv) charges (including applicable taxes) for electricity, water and other utilities for which Landlord is entitled to reimbursement from any tenant, and (v) the cost of any HVAC, janitorial or other services provided to tenants on an extra-cost basis after regular business hours;

(2) Salaries and bonuses of officers and executives of Landlord and administrative employees above the grade of property manager or building supervisor and Landlord's general overhead;

(3) The cost of any work or service performed on an extra-cost basis for any tenant of the Property (including Tenant);

(4) The cost of any work or services performed for any other property other than the Property;

(5) Interest on debt or principal amortization payments or any other payments on any mortgage or any other payments under any ground lease;

(6) Any fees, costs and commissions incurred in procuring or attempting to procure other tenants, including, but not necessarily limited to brokerage commissions, finder's fees, attorney's fees and expenses and entertainment cost and travel expenses and any costs of advertising or promotion of the Property;

(7) Any cost included in Operating Expenses representing an amount paid to a person, firm, corporation or other entity related to Landlord which is in excess of the amount which would have been paid on an arms-length basis in the absence of such relationship;

(8) Any costs of painting or decorating of any interior parts of the Building occupied or suitable for occupancy exclusively by a single tenant;

(9) The cost of any repairs, alterations, additions, improvements, changes, replacements or other items which under generally accepted accounting principles are properly classified as capital expenses;

(10) Any costs necessary to cure any violation of any law, ordinance or regulation applicable to the Property, not caused by the Tenant or to remediate any environmental condition not caused by the Tenant;

(11) Depreciation of the Building or any part thereof or any equipment therein;

(12) Replacement or contingency reserves or any bad debt loss, rent loss or reserves for bad debts or rent loss;

(13) Expenses for renovating any tenant's space;

(14) Legal or other professional fees relating to leasing, financing, tenant disputes or other services not related to the normal maintenance, cleaning or repair of the Property;

(15) Costs, expenses and fees relating to solicitation of, advertising for and entering into leases and other occupancy arrangements for space in the Building, including but not limited to legal fees, space planners' fees, real estate brokers' leasing commissions and advertising expenses;

(16) Costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Property, costs of any disputes between Landlord and its employees (if any), or outside fees paid in connection with disputes with other tenants or adjacent property owners;

(17) Costs, expenses or judgments occasioned by casualty, injury or damage, to the extent that such costs, expenses or judgments are or are required to be covered by insurance to be maintained by Landlord under this Lease; and

(18) Other expenses that do not relate to the maintenance, repair or operation of the Premises, Building or Land.

(d) Payment for Taxes, Insurance and Operating Expenses. Tenant's payment to Landlord for said taxes pursuant to paragraph (a) above and insurance pursuant to paragraph (b) above shall be paid in equal monthly installments at the same time and manner as the Base Rent. The amount of Tenant's monthly installments of Additional Rent for said taxes and insurance shall be increased or decreased, as the case may be, upon Tenant's receipt of an estimate by Landlord of said real estate taxes and insurance for the then current year. In the event said real estate taxes and/or insurance costs exceed the amount of Tenant's payments for that year, Tenant shall pay the balance within thirty (30) days following Landlord's billing therefore; in the event that said real estate taxes and insurance payments are less than the amount of Tenant's payment for any year, the excess of such payments shall be applied to Tenant's payments for the next succeeding year. Tenant's payments for Operating Expenses pursuant to paragraph (c) above shall be paid to Landlord within thirty (30) days following Landlord's billing for same. Taxes, Insurance and Operating Expenses shall be prorated for any partial billing period falling within the term of this Lease.

Exhibit C

<i>Expense</i>	<i>Current Yearly</i>
Snow removal	5,114
Management / Maintenance	48,000
Insurance	10,824
Real estate taxes	100,596
Common Area Electric	960
Alarm monitoring & testing	2,200
Elevator electricity	374
Dumpster	9,142
Water/Sewer	4,551
Elevator maintenance	10,559
Common area cleaning	6,950